

REMARKS

In the Claims:

Claims 1-41 remain in the application.

Priority:

Examiner stated that Applicant is not entitled to receiving the benefit of the earlier filing date of Application No. 09/239,624 under 35 U.S.C. §120 because the current application and the prior application were not copending. Applicant respectfully traverses and asserts that there was copendency at the filing of the current application. While Application No. 09/861,297 may have become abandoned prior to the filing of the current application, Applicant has amended the first paragraph to remove this reference. Applicant, however, does not believe that Application No. 09/239,624 became abandoned on January 7, 2004, as stated in the Office Action. Applicant respectfully notes that the USPTO Private PAIR system indicates that Application No. 09/239,624 became abandoned on June 1, 2004 and that a notice of abandonment was mailed on June 2, 2004, both of which were after the filing (March 31, 2004) of the current application. Therefore, the current application and Application No. 09/239,624 were copending. Accordingly, Applicant respectfully requests the benefit of the earlier filing date of January 28, 1999.

Oath/Declaration:

The oath/declaration was considered defective in the Office Action and a new oath/declaration was required. In response, Applicant respectfully traverses and

asserts that the oath/declaration is not defective. As noted above, the current application is a continuation of Application No. 09/239,624, and as such a copy of the oath/declaration filed in the prior application is acceptable under 37 CFR 1.63(d). Accordingly, Applicant respectfully requests the requirement for a new oath/declaration be withdrawn.

Double Patenting:

Claims 1-41 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-23 of U.S. Patent No. 6,611,552. Applicant respectfully notes that the '552 patent and the current application both have priority dates of January 28, 1999. Therefore, Applicant respectfully submits that a terminal disclaimer is not needed because any issued claims from the current application will expire on the same day as the '552 patent. Accordingly, Applicant respectfully requests the double patenting rejection of claims 1-41 be withdrawn.

Rejections:

Claims 1-41 were rejected under 35 U.S.C. §102(b) as being anticipated by Beck WO 00/4558. In response, Applicant respectfully traverses the rejection.

As mentioned above, the current application is entitled to the benefit of the earlier filing date of Application No. 09/239,624, namely January 28, 1999, which predates the publication of WO 00/4558 on August 3, 2000. For at least this reason, WO 00/4558 can not be considered prior art. Accordingly, Applicant respectfully requests the §102(b) rejection of claims 1-41 be withdrawn.

CONCLUSION

In light of the foregoing, Applicant respectfully submits that claims 1-41 are in condition for allowance and such action is earnestly solicited. The Examiner is invited to call Dave Guglielmi at (503) 712-1610 if there remains any issue with allowance of this case.

Respectfully submitted,

Mitchell Beck

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